

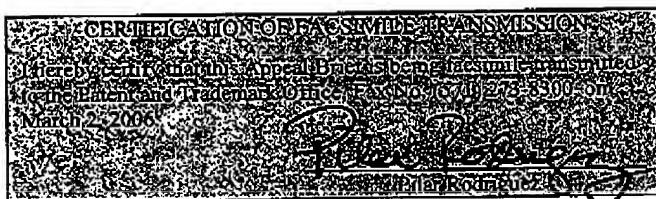
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Patent

Attorney Docket No.: Intel 2207/11666  
Serial No.: 09/891,167  
Assignee: Intel Corporation**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANT : Andy L. RUSE et al. Confirmation No. 1366  
SERIAL NO. : 09/891,167  
FILED : June 26, 2001  
FOR : SYSTEM, METHOD AND COMPUTER PROGRAM  
FOR MESSAGE DELIVERY BASED ON A TREND  
ANALYSIS  
GROUP ART UNIT : 2154  
EXAMINER : Joshua Joo

M/S: APPEAL BRIEFS - PATENTS  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450



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**APPEAL BRIEF**

Dear Sir:

This brief is in furtherance of the Notice of Appeal, filed in this case on October 3, 2005.

**1. REAL PARTY IN INTEREST**

The real party in interest in this matter is Intel Corporation. (Recorded June 26, 2001, Reel/Frame 011941/0250).

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2. **RELATED APPEALS AND INTERFERENCES**

There are no related appeals.

3. **STATUS OF THE CLAIMS**

Claims 1-18 are pending in the application. Claims 1-18 are rejected under 35 U.S.C. §103(a) as being unpatentable over Singh (U.S. Patent 6,405,035) and Lemelson et al. (U.S. Patent 6,028,514).

4. **STATUS OF AMENDMENTS**

Applicants did not make any amendments to the claim subsequent to final rejection. The claims listed on page 1 of the Appendix attached to this Appeal Brief reflect the present status of the claims (including amendments entered after final rejection).

5. **SUMMARY OF THE CLAIMED SUBJECT MATTER**

The embodiment of claim 1 generally describes a method for forwarding messages, comprising: monitoring locations of responses to incoming messages along with the time of day and day of week (e.g., *see* page 5, lines 19-20); storing each response along the associated time of day and day of week in a database (e.g., *see* page 5, lines 21-22); performing a statistical trend analysis on a user basis to determine a probability of contacting the user for a given time of day and day of week at a given location (e.g., *see* page 6, lines 16-20); storing in a trend analysis table the result of the statistical trend analysis performed (e.g., *see* page 7, lines 2-4); and transferring incoming messages to the location in the trend analysis table with the highest probability of contacting the user (e.g., *see* page 6, lines 23 to page 7, line 2).

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The embodiment of claim 7 generally describes a system for forwarding messages, comprising: a monitoring module to monitor responses by users to messages received and store the location of the response with a time stamp in a database (e.g., *see* page 5, lines 19-20); a trend analysis module to perform a statistical probability analysis on the location and time stamp data in the database and determine the probability of contacting the user at each of a plurality of locations for a given time of day (e.g., *see* page 6, lines 16-20) and storing the probability of contacting the user at each of a plurality of locations in a trend analysis table (e.g., *see* page 7, lines 2-4); and a forwarding module to receive an incoming message and forward the incoming message to a location with the highest probability of contacting the user as designated in the trend analysis table (e.g., *see* page 6, lines 23 to page 7, line 2).

The embodiment of claim 13 generally describes a computer program for forwarding messages, comprising: monitoring locations of responses to incoming messages along with the time of day and day of week (e.g., *see* page 5, lines 19-20); storing each response along the associated time of day and day of week in a database (e.g., *see* page 6, lines 16-20); performing a statistical trend analysis on a user basis to determine a probability of contacting the user for a given time of day and day of week at a given location; storing in a trend analysis table the result of the statistical trend analysis performed (e.g., *see* page 7, lines 2-4); and transferring incoming messages to the location in the trend analysis table with the highest probability of contacting the user (e.g., *see* page 6, lines 23 to page 7, line 2).

FIG. 1 is a systems diagram of an example embodiment of the present invention. The systems diagram illustrated in FIG. 1 is designed with the typical office environment in mind. A PBX system 10 is utilized to interconnect the telephones 20 in the office as well as providing access to the PSTN 30 for the telephones and the local area network comprising server 40 and

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several terminals or personal computers (PC) 100. Via the PSTN 30 access to the a pager network 80 or cellular network 70 is also possible as well as to the Internet 60. As would be appreciated by one of ordinary skill in the art is also possible to access the Internet via high-speed coax or fiber-optic cable rather than through the PSTN. In addition, database 50 is provided which may be accessible by either the PBX 10 and/or the server 40. This database 50 would be utilized by the embodiments of the present invention to store the historical and trend analysis data required.

FIG. 2 is a flowchart of the monitoring module 500, shown in FIG. 5, used in an example embodiment of the present invention.

FIG. 3 is a flowchart of the trend analysis module 510, shown in FIG. 5, used in an example embodiment of the present invention.

FIG. 4 is a flowchart of the forwarding module 520, shown in FIG. 5, used in an example embodiment of the present invention.

FIG. 5 is a modular configuration diagram showing the data flow among the software modules used in an embodiment of the present invention and as previously discussed in reference to FIGs. 2 through 4.

## **6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

A. Are claims 1-18 rejected under 35 U.S.C. §103(a) rendered obvious by Singh (U.S. Patent 6,405,035) ("Singh") in view of Lemelson et al. (U.S. Patent 6,028,514) ("Lemelson")?

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7. **ARGUMENT**

A. **Claims 1-18 are not rendered obvious by Singh in view of Lemelson**

Applicants respectfully submit that nowhere in the cited references is the disclosure, teaching or suggestion of: "[a] method for forwarding messages, comprising: *monitoring locations of responses to incoming messages along with the time of day and day of week; ...* and transferring incoming messages to the location in the trend analysis table with the highest probability of contacting the user" (e.g., as described in claim 1).

I. **Singh**

Applicants agree with the Examiner's assertion that Singh differs from the embodiment of the present application, in at least that it is directed toward monitoring the access of *messages*, whereas the instant application is directed toward monitoring the [location of] *responses to messages* (e.g., see claim 1). See Advisory Action, page 2, paragraph 3.

However, Applicants disagree with the Examiner's assertion that Singh *monitors the location of access of messages*. See Advisory Action, page 2, paragraph 2. It does not. The Examiner cites column 3 lines 18-23 of Singh (cited in Office Action dated 10/7/2004, page 2, paragraph 3). Column 3 line 18-31 (including the cited section) of Singh state:

Subscriber agents 19 monitor the message status of each subscriber *message including receipt, storage, and access of messages within each of their respective devices 16*.

Subscriber agent 19 further signals the information to the master agent 21. Master agent 21 monitors the status of each of the messages on each device 16 and ensures redundant messages are not accessed. Agents 19, 21 are active and persistent software components that perceive, reason, act, and communicate. Agents are disclosed in the book "Readings in Agents", edited by Michael N. Huhns and Munindar P. Singh, herein incorporated by reference in its entirety.

*Host server 10 may further maintain a record of each message sent to a subscriber and the access time and date. (Emphasis added)*

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In particular, column 3 lines 19-21 (cited in the Advisory Action), state:

Subscriber agents 19 monitor the message status of each subscriber message including receipt, storage, and access of messages within each of their respective devices 16.

The cited section of Singh does not disclose monitoring locations of any sort, instead merely describing the monitoring the status of the messages, including "access". Monitoring whether a message has been accessed is not the equivalent of monitoring the responses to messages, or the location of the responses to messages. Applicants submit column 3, lines 30-31 further clarify that the Singh reference does not describe the monitoring of locations of access. As quoted above, column 3, lines 30-31 state:

Host server 10 may further maintain a record of each message sent to a subscriber and the access time and date.

Applicants submit that the "monitoring" described in Singh does not include monitoring or maintaining a record of locations of access at all, instead merely monitoring and maintaining a record of *access time and date*. The embodiment of claim 1 specifically recites *monitoring locations of responses to incoming messages*, and the cited section of the Singh reference does not describe monitoring locations at all.

Next, in the Advisory Action (*See* Advisory Action, page 2, paragraph 3), the Examiner argues that Singh:

- 1) describes multiple devices as part of the system, including wireless communication devices, an office computer, and a home computer
- 2) presumably, all of these devices are in different locations; therefore,
- 3) Because these devices are separate entities and are in different locations, Singh teaches monitoring locations of access to incoming messages.

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Applicants disagree. Applicants submit the ability to determine receive messages from one of multiple sources is not the equivalent of determining *the location* where the signal is coming from. In other words, just because the multiple sources are capable of sending messages, that does not mean the Singh system is capable of monitoring anything other than *access time and date* of the messages (the only things the Singh system *does* monitor, quoted above). When Singh describes the monitoring process over the multiple devices, it is merely monitoring the access time and date (discussed above). In order to monitor the location of access, the Singh reference must, for example, describe an ability to *identify a device* and its *location*. The Singh reference does not describe or discuss any such capability.

Applicants submit such leaps in logic are insufficient to support a proper §103(a) rejection, and that Singh reference cannot support a proper §103(a) rejection of the current application.

## II. Lemelson

The Examiner states that “it would have been obvious to one of ordinary skill at the time of the invention was made to combine the inventions of Singh and Lemelson and monitor the response of the incoming message because monitoring the response will improve Singh’s invention . . .”. The Examiner further asserts that Lemelson teaches an invention for monitoring a person’s location, where a monitor checks for responses to paged messages from column 16, line 53 – column 17, line 14. *See* Office Action dated 10/7/2004, page 2, paragraph 4.

Applicants disagree. Column 16, line 53 – Column 17, line 14 state:

This paging signal is intended to illicit a response from emergency assistance/response personnel that may be in the vicinity or area of the warning unit 12 that issued the original distress message. As indicated in FIG. 5B, *the monitor center 10 checks for responses to the paging message at unit block 206*. If no response to the page is received

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after a designated time, a check is made to see whether or not "M" paging messages have yet been sent at block 208. If the pre-determined "M" number of tries have not been made, control is passed to unit 12 at block 210 and "K" is increased by one with control being passed back to the broadcast emergency assistance page block 204 for retransmission of the emergency assistance/response paging message. *The retransmission continues until either a response is received at block 206 or a total of "M" tries have been made as indicated in FIG. 5B. If a response is received, control is passed to block 216 to confirm that emergency assistance/response is en-route to the location of the emergency.*

Returning now to block 208, if after "M" attempts, no response is received to the broadcast emergency assistance/response page, control is passed to dispatch back-up assistance/response block 212 where assistance/response is dispatched even though it may take longer to reach the location of the warning unit 12 than it would have if responded to at the time the alarm message was originated. Attempts to contact back-up assistance/response are continued (i.e. control loops to block 212) until a response message is received at block 214 from emergency personnel. (*emphasis added*)

As can be seen from the above cited section of Lemelson, the cited section describes an emergency response system wherein a emergency signals are dispatched and responded to by emergency personnel. But with regard to monitoring any signals, Lemelson merely discloses the ability of "...the monitor center 10 [to check] for responses *to the paging message* at unit block 206".

Applicants submit monitoring for a response to a paged message is not the equivalent of *monitoring a location for the responses* as recited in the embodiment of claim 1. In other words, determining *whether* a response has come in is not the equivalent of determining *where* the response is coming from. The above cited sections of Lemelson do not disclose "...monitoring *locations of responses* to incoming messages along with the time of day and day of week", as specifically recited in independent claim 1.

Next, in the Advisory Action, the Examiner asserts that column 16, lines 57-58 describe the monitoring of *locations* to responses ("As indicated in FIG. 5B, the monitor center 10 checks for responses to the paging message at unit block 206."). See Advisory Action, page 2,



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paragraph 4. Applicants disagree, and submit that the Examiner again takes this single sentence out-of-context to support an improper §103(a) rejection.

As discussed above, column 16, line 20 to column 17, line 4 describes part of the emergency response system described in Lemelson. In this section (after the broadcast of a distress signal), Lemelson attempts to locate appropriate emergency response units to aid the person sending the distress signal. The relevant section (including the cited section), column 16, line 53 – column 17, line 4 states:

This paging signal is intended to illicit a response from emergency assistance/response personnel that may be in the vicinity or area of the warning unit 12 that issued the original distress message. *As indicated in FIG. 5B, the monitor center 10 checks for responses to the paging message at unit block 206. If no response to the page is received after a designated time, a check is made to see whether or not "M" paging messages have yet been sent at block 208. If the pre-determined "M" number of tries have not been made, control is passed to unit 12 at block 210 and "K" is increased by one with control being passed back to the broadcast emergency assistance page block 204 for retransmission of the emergency assistance/response paging message. The retransmission continues until either a response is received at block 206 or a total of "M" tries have been made as indicated in FIG. 5B. If a response is received, control is passed to block 216 to confirm that emergency assistance/response is en-route to the location of the emergency. (emphasis added)*

Therefore, as argued above, the cited section does not describe monitoring the *location* of a response, but rather only the *presence or existence* of a "response". Either the presence or existence of a response is noted by the system, or retransmission of the inquiring paging signal continues until a response is received or "M" of tries occurs. However, the monitoring of *the location of a response to a message* is not found anywhere in the cited section.

Also, in the Advisory Action, the Examiner asserts that column 17, lines 1-4 describe determining the location of the user to contact the user. *See* Advisory Action, page 2, paragraph 4. Again, Applicants submit the cited section states no such thing. Column 17, lines 1-4 state:

The retransmission continues until either a response is received at block 206 or a total of "M" tries have been made as indicated in FIG. 5B. If a response is received, control is

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passed to block 216 to confirm that emergency assistance/response is en-route to the location of the emergency.

As already discussed above, the retransmission process continues until a response (devoid of any location information) is received. Then, upon receipt of the response, a confirmation that emergency assistance is en-route is done. This "confirmation" is the equivalent of a person at a communications center confirm to another person in the emergency response unit (e.g., over a wireless radio system) that aid is on the way. This does not, however, describe "[a] method for forwarding messages, comprising: *monitoring locations of responses to incoming messages along with the time of day and day of week ...*" as specifically recited in the embodiment of claim 1. Applicants submit that this section, taken in its proper context, is insufficient to support a proper §103(a) rejection.

In the Advisory Action, the Examiner attempts to supplement the initial rejection by asserting that Lemelson teaches monitoring the location of responses, as the monitor center determines the locations the responses to the page messages, citing previously uncited column 16, lines 30-32. *See* Advisory Action, page 2, paragraph 4. Applicants disagree.

Column 16, lines 30-32 are included in a description of the operation of a central alarm ad warning monitor response center. Column 16, lines 10-32 state:

The system continually searches for received alarm messages from unit(s) 12 at block 192 as indicated in FIGS. 5A and 5B. The messages and G.P.S. coordinates transmitted from each warning unit 12 are decoded at block 194 as shown in FIGS. 5A and 5B.

An immediate decision is made at block 195 indicating whether or not a generalized danger warning message should be transmitted via the paging network to alert other users/carriers of warning units 12 as shown in FIG. 1 of the dangerous situation indicated by the received message. ... If a generalized danger warning is to be transmitted, control is diverted to block 193 where the paging message is transmitted. The message transmitted via the paging network of FIG. 1 include the G.P.S. coordinates of the received message as determined at block 194 of FIGS. 5A and 5B.

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*When taken in its full context*, is intended to describe an emergency system operating with the following steps:

- a) A distress signal/ received alarm message is transmitted (e.g., from position A)
- b) A decision is made whether or not a generalized danger warning should be transmitted to alert other users/carriers of warning units
- c) If a generalized danger warning is to be transmitted message transmitted via the paging network (e.g., to another user in position B), the generalized danger warning may include the G.P.S. coordinates of the location A of the distress signal/ incoming received alarm message.

In sum, Person A sends out a distress signal. Person A's position is monitored, and Person B is notified of the location of distress signal/Person A over network. It should be noted, however, that Person A's distress signal is not *in response* to anything at all, but rather an *originating* event that triggers the beginning of the rescue-emergency system described in Lemelson.

Therefore, the system described in the cited section does not monitor location (the G.P.S. coordinates) *of a response* to at all. In fact, the cited section is not directed towards *responses* at all. Instead, the cited section is directed toward the location of an *originating* (distress) message, and describes monitoring and transmitting the location of the *originating message* to other units in the network.

Contrary to the Examiner's assertion, Lemelson does not teach the monitoring of the location of response. Therefore, Applicants submit this section does not describe "...monitoring locations of *responses to incoming messages* ..." (as specifically recited in the embodiment of claim 1), and is inadequate to support a proper §103(a) rejection.

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Therefore, it is clear that neither the Singh nor Lemelson reference teach, suggest or disclose a method for forwarding messages including at least monitoring locations of responses to incoming messages, and nor can they be properly combined to teach, describe or suggest such. Therefore, since none of the cited reference can be combined to support a proper §103(a) rejection, the rejection of claim 1 should be withdrawn. Independent claims 1, 7, and 13 contain substantively similar limitations and therefore are also allowable for similar reasons. Claims 2-6, 8-12 and 14-18 depend from allowable independent claims 1, 7, and 13, and therefore are in condition for allowance as well.

In addition and in the alternative, Applicants respectfully submit that there is no suggestion or motivation to combine Singh and Lemelson beyond the impermissible use of hindsight. Applicants submit that a *prima facie* case of obviousness has not been made. The MPEP requires that the references must suggest making the combinations. MPEP §2141.01 (citing *Hodosh v. Block Drug Co., Inc.*; §706.02(j) (the initial burden is on the examiner to provide a convincing line of reasoning with explicit or implicit suggestions to combine references).

Merely stating that it would have been obvious for a person of ordinary skill in the art to combine references, without pointing to a specific hint or suggestion to combine, has been rejected by the Federal Circuit, as an invalid basis of rejection under 35 U.S.C. §103. *In re Lee*, 277 F.3d 1338, 1343 (Fed. Cir. 2002)(the court held that rejecting a conclusory statement that it would have been obvious to combine the references without evidence of a teaching, motivation, or suggestion to select and combine the references, citing numerous case); *In re Dembiczak*, 175 F.3d 994,999 (Fed. Cir. 1999) ("Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the

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requirement for a showing of the teaching or motivation to combine prior art references.”) In this case, the Examiner has taken the generic concept of “responses to paged messages” allegedly disclosed in Lemelson and combined it in an ad hoc fashion to out-of-context, incomplete portions of Singh to form the basis of its rejection. However, there is no teaching, suggestion or motivation to combine to be found in the references that adequately form the basis of a proper 35 U.S.C. §103(a) rejection of independent claim 1. Independent claims 1, 7, and 13 contain substantively similar limitations and therefore are also allowable for similar reasons. Claims 2-6, 8-12 and 14-18 depend from allowable independent claims 1, 7, and 13, and therefore are in condition for allowance as well.

#### Conclusion

For at least these reasons, the Claims 1-18 are believed to be patentable over the cited references, individually and in combination. Withdrawal of the rejections is, therefore, respectfully requested.

Appellants therefore respectfully request that the Board of Patent Appeals and Interferences reverse the Examiner’s decision rejecting claims 1-18 and direct the Examiner to pass the case to issue.

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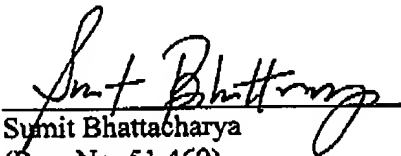
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Respectfully submitted,

KENYON & KENYON LLP

Date: March 2, 2006

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## **APPENDIX**

(Brief of Appellants Andy L. RUSE et al.  
U.S. Patent Application Serial No. 09/891,167)

### **8. CLAIMS ON APPEAL**

1. (Previously Presented) A method for forwarding messages, comprising:  
  
monitoring locations of responses to incoming messages along with the time of day and day of week;  
  
storing each response along the associated time of day and day of week in a database;  
  
performing a statistical trend analysis on a user basis to determine a probability of contacting the user for a given time of day and day of week at a given location;  
  
storing in a trend analysis table the result of the statistical trend analysis performed; and  
  
transferring incoming messages to the location in the trend analysis table with the highest probability of contacting the user.
2. (Original) The method recited in claim 1, wherein said trend analysis table comprises a user identification, a plurality of times of day and days of week with locations of contact and probabilities of successful contact associated with each location.
3. (Original) The method recited in claim 2, wherein said trend analysis table further comprises a user override location that indicates probabilities of successful contact for each location are to be ignored and only the override location is to be used for contact.

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4. (Original) The method recited in claim 3, wherein the incoming messages and responses are from PSTN telephone, cellular telephone, pager, fax, voice mail, e-mail or other voice or digital communication format.

5. (Original) The method recited in claim 4, further comprising:  
checking the user override location in the trend analysis table; and  
transmitting the incoming message to the user override location when set.

6. (Original) The method recited in claim 4, further comprising:  
contacting the user at the location with the highest probability of successful contact associated with the location;  
contacting the user at the location with the second highest probability of success when unable to contact the user at the location with the highest probability of success.

7. (Original) A system for forwarding messages, comprising:  
a monitoring module to monitor responses by users to messages received and store the location of the response with a time stamp in a database;  
a trend analysis module to perform a statistical probability analysis on the location and time stamp data in the database and determine the probability of contacting the user at each of a plurality of locations for a given time of day and storing the probability of contacting the user at each of a plurality of locations in a trend analysis table; and



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a forwarding module to receive an incoming message and forward the incoming message to a location with the highest probability of contacting the user as designated in the trend analysis table.

8. (Original) The system recited in claim 7, wherein the database further comprises:  
a trend analysis table having a user identification, a plurality of times of day and days of week with locations of contact and probabilities of successful contact associated with each location.

9. (Original) The system recited in claim 8, wherein said trend analysis table further comprises a user override location that indicates probabilities of successful contact for each location are to be ignored and only the override location is to be used for contact.

10. (Original) The system recited in claim 9, wherein the responses monitored by the monitoring module are provided in response to incoming messages, said incoming messages and responses are from PSTN telephone, cellular telephone, pager, fax, voice mail, e-mail or other voice or digital communication format.

11. (Original) The system recited in claim 10, wherein the forwarding module checks an override location specified by a user and forwards all incoming messages to the override location.

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12. (Previously Presented) The system recited in claim 10, wherein the forwarding module will attempt to contact the user at the location in the trend analysis table with the highest probability of contact and proceed to contact the user at the location with the second highest probability of contact when the contacting the user at the location with the highest probability of contact fails.

13. (Previously Presented) A computer program for forwarding messages, comprising:  
monitoring locations of responses to incoming messages along with the time of day and day of week;  
storing each response along the associated time of day and day of week in a database;  
performing a statistical trend analysis on a user basis to determine a probability of contacting the user for a given time of day and day of week at a given location;  
storing in a trend analysis table the result of the statistical trend analysis performed; and  
transferring incoming messages to the location in the trend analysis table with the highest probability of contacting the user.

14. (Original) The computer program recited in claim 13, wherein said trend analysis table comprises a user identification, a plurality of times of day and days of week with locations of contact and probabilities of successful contact associated with each location.

15. (Original) The computer program recited in claim 14, wherein said trend analysis table further comprises a user override location that indicates probabilities of successful contact for each location are to be ignored and only the override location is to be used for contact.

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16. (Original) The computer program recited in claim 15, wherein the incoming messages and responses are from PSTN telephone, cellular telephone, pager, fax, voice mail, e-mail or other voice or digital communication format.

17. (Original) The computer program recited in claim 16, further comprising:  
checking the user override location in the trend analysis table; and  
transmitting the incoming message to the user override location when set.

18. (Original) The computer program recited in claim 16, further comprising:  
contacting the user at the location with the highest probability of successful contact associated with the location;  
contacting the user at the location with the second highest probability of success when unable to contact the user at the location with the highest probability of success.

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## **9. EVIDENCE APPENDIX**

No further evidence has been submitted with this Appeal Brief.

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#### **10. RELATED PROCEEDINGS APPENDIX**

Per Section 2 above, there are no related proceedings to the present Appeal.

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